

## SENATE BILL NO. 43

INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GENERAL INVESTMENT TAX CREDIT; PROVIDING THAT A 3 PERCENT CREDIT FOR QUALIFIED INVESTMENTS IS ALLOWED AGAINST INDIVIDUAL INCOME TAXES OR CORPORATE LICENSE TAXES; LIMITING THE INVESTMENT CREDIT IN ANY 1 YEAR TO NO MORE THAN 45 PERCENT OF THE TAXPAYER'S TAX LIABILITY; PROVIDING FOR A 7-YEAR CARRYOVER OF UNUSED INVESTMENT CREDITS IF THE UNDERLYING INVESTMENT REMAINS IN MONTANA; AMENDING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-30-161, MCA, is amended to read:

**"15-30-161. Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations defined in 15-31-201, to take the investment credit, as provided for in 15-30-162, in order to stimulate capital investment by the small business sector."

**Section 2.** Section 15-30-162, MCA, is amended to read:

**"15-30-162. Investment credit.** ~~(1) There is allowed as a~~ an investment tax credit against the tax imposed by 15-30-103. The amount of the credit must be determined pursuant to 15-31-123. ~~a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954 (26 U.S.C. 38) or as that section may be renumbered or amended. However, rehabilitation costs as set forth under section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46), or as that section may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954 (26 U.S.C. 38), as amended, if the property meets all of the following qualifications:~~

~~—— (a) it was placed in service in Montana; and~~

~~——— (b) it was used for the production of Montana adjusted gross income.~~

~~——— (2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46) or as that section may be renumbered or amended.~~

~~——— (3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year or \$500, whichever is less.~~

~~——— (4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.~~

~~——— (5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954 (26 U.S.C. 47) or as that section may be renumbered or amended."~~

**Section 3.** Section 15-31-123, MCA, is amended to read:

**"15-31-123. Investment credit.** (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection ~~(3)~~ (2) and to stimulate capital investment by the small business sector.

~~(2) For the purposes of this section, "small business" means a business that does not have:~~

~~——— (a) more than 10 shareholders;~~

~~——— (b) a person who is not an individual (other than an estate or other than a trust described in subsection (8)) as a shareholder;~~

~~——— (c) a nonresident alien as a shareholder; and~~

~~——— (d) more than one class of stock.~~

~~(3)~~(2) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 an amount equal to:

1 (a) a percentage of the investment credit carryovers; and

2 (b) the investment credit for the tax year.

3 (3) An investment qualifies for a credit allowed with respect to certain if:

4 (a) the investment is depreciable property under ~~section 38~~ sections 46(c) and 48 of the Internal  
5 Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. 1986 (26 U.S.C.  
6 46(c) and 48) as those sections read prior to November 5, 1990. However, rehabilitation costs as set forth  
7 under subject to the limitations provided for certain regulated companies in section 46(a)(2)(F) 46(f) of the  
8 Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be  
9 included in the computation of the investment credit. The credit is allowed for the purchase and installation  
10 of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if  
11 the property meets all of the following qualifications: 1986 (26 U.S.C. 46(f) as that section read prior to  
12 November 5, 1990, and if the property is not a motor vehicle under 8,000 pounds gross weight;

13 (a)(b) it the property was placed in service in Montana; and

14 (b)(c) it the property was used, for the production of Montana income acquired, constructed,  
15 reconstructed, erected, or placed into service after December 31, 2001.

16 (4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined  
17 under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be  
18 renumbered or amended.

19 (5)(4) (a) Notwithstanding the provisions of subsection (4), the The amount of the investment  
20 credit for a tax year is 3% of the amount of qualified investments made during the tax year. The  
21 investment credit allowed for the taxable tax year may not exceed \$500 45% of the tax liability of the  
22 taxpayer for that year.

23 (b) If the sum of investment credit carryovers and the amount of credit for the tax year from the  
24 credit allowed by subsection (2) exceeds the limitation imposed by subsection (4)(a) for the current tax  
25 year, the excess attributable to the current tax year's credit is an investment credit carryover to the 7  
26 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the  
27 succeeding years, and the oldest available unused credit must be used first. The investment credit  
28 carryover may be used only as long as the qualified investment property for which the unused credit was  
29 granted remains in Montana.

30 (6)(5) If property for which an investment credit is claimed is used both inside and outside this

state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the ~~taxable tax~~ year that the property was located in Montana and the denominator of which is the number of days during the ~~taxable tax~~ year that the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

~~(7)(6)~~ The investment credit allowed by this section is subject to recapture as provided for in section ~~47 50~~ of the Internal Revenue Code of ~~1954, as amended, or as section 47 may be renumbered or amended~~ 1986 (26 U.S.C. 50). A recapture of the credit allowed by this section is not required with regard to property ceasing to qualify by reason of an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1986 (26 U.S.C. 1033).

~~(8) (a) For purposes of subsection (2)(b), any of the following trusts may be a shareholder without disqualifying the business for the investment credit:~~

~~—— (i) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;~~

~~—— (ii) a trust created primarily to exercise the voting power of stock transferred to it;~~

~~—— (iii) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.~~

~~—— (b) In the case of a trust described in subsection (8)(a)(ii), each beneficiary of the trust shall be treated as a shareholder.~~

(7) If a small business corporation, as defined in 15-31-201, qualifies for the credit provided for in this section, the credit must be attributed to the shareholders using the proportion used to report the corporation's income or loss for Montana income tax purposes.

(8) An investment credit claimed under this section may be claimed after any other tax credit to which the taxpayer may be entitled."

**NEW SECTION. Section 4. Effective dates -- applicability -- adoption of rules.** (1) This section is effective on passage and approval.

(2) [Sections 1 through 3] are effective January 1, 2002, and apply to tax years beginning after December 31, 2001.

(3) The department of revenue may proceed to adopt rules to implement [sections 1 through 3],

1 but the rules may not become effective prior to January 1, 2002.

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